

(1955) 12 BOM CK 0001

Bombay High Court

Case No: Second Appeal No. 246 of 1954

Krishnaji Anant Joshi

APPELLANT

Vs

Bhalchandra Anant
Patwardhan

RESPONDENT

Date of Decision: Dec. 22, 1955

Citation: (1956) 58 BOMLR 624

Hon'ble Judges: Bavdekar, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Bavdekar, J.

This is a second appeal arising from execution of a decree upon an award passed on April 9, 1935, and the question which falls for determination is whether the application for execution from which it arises was in time

2. The decree was a decree for money, but three survey Nos. had been charged, for the decretal amount. In order to save limitation, the decree-holders relied upon two endorsements signed by the judgment-debtors. The first endorsement was with regard to payment of Rs. 5 on January 19, 1939, and the second endorsement was similarly for the payment of Rs. 5 on August 9, 1941. It is not in dispute that the first endorsement amounted to an acknowledgment of liability and saved limitation. That endorsement also bears the proper stamp. The second endorsement does not however bear one. An objection to its admissibility into evidence on the ground that it is not stamped does not appear to have been taken in the trial Court, nor was it taken in the first appellate Court either. But it is contended on behalf of the appellants judgment-debtors that that objection was not taken at the time when the endorsements were proved in the lower Court, because the decree holders never tendered either endorsement in evidence, and consequently it was not necessary for the appellants to take an objection about the admissibility of the second endorsement on the ground of absence of proper stamp.

3. [His Lordship after dealing with a point not material to this report, proceeded:] In that case the question which arises is whether the second acknowledgment had to be stamped. Now, it would be required to be stamped if it fell within Article 1 of the Stamp Act. The acknowledgment is to the effect that Rs. 5 were paid towards the decree. There is consequently an acknowledgment of liability which, would save limitation if it is admitted into evidence. Now, whether the acknowledgment requires to be stamped or not depends upon whether it falls within Article 1 of the Stamp Act. It is not every acknowledgment of a debt exceeding Rs. 20 which is required to be stamped. It is only an Acknowledgment signed by the debtors in order to supply evidence of the debt which is required to be stamped. The question then is whether in this case the acknowledgment was signed by the debtors in order to supply evidence of the debt.

4. Now, the debt in this case was the decretal debt. It was really speaking evidenced by the decree. The judgment-debtor cannot plead any payment unless he certifies it within the "prescribed time. There was no difficulty consequently in the way of proving the debt. On the other hand, at the time when the endorsement was taken from the judgment-debtors limitation was about to expire. It is quite clear therefore that the decree-holder obtained the endorsement from the judgment-debtors in order to save limitation. This inference is further supported by the fact that the endorsement does not state what the debt is. It is obvious that in order to find out what the amount due at the date of the acknowledgment was the decree-holders could not rely upon the endorsement alone because all that it said was that Rs. 5 had been paid towards the amount due upon the decree which did not throw any light upon the question as to what debt due from the judgment-debtors to the decree holders at the time of acknowledgment was. The decree-holders would not consequently want to take such an endorsement from the judgment-debtors if he wanted an acknowledgment for proving the debt. He obviously took the endorsement consequently not for the purpose of obtaining from the judgment-debtors any evidence of the debt, but for the purpose of obtaining from them an acknowledgment of liability to save limitation.

5. It is said, however, that what we have got to find out in such a case is not the purpose for which the decree-holder obtained the endorsement, but the purpose for which the judgment-debtors signed it. Even if we look it from that point of view it is obvious that in this case the decree-holders must have asked for an endorsement from the judgment-debtors in order that they should have an acknowledgment of the debt from them for saving limitation. The judgment-debtors would also understand that by the endorsement which they were making they were allowing the decree-holders to have in their hands an instrument by which limitation would be saved. It could not possibly be that the judgment-debtors thought that they were supplying the decree-holders evidence of the debt when they endorsed the decree with a statement that Rs. 5 had been paid towards the decree. It does not seem to make any difference at any rate so far as the present case is concerned if what we

have got to look at is the purpose for which the debtors made the acknowledgment.

6. In that case it seems to me that the acknowledgment was not required to be stamped. I have already mentioned that what has got to be determined when the question is whether a document which is or purports to be an acknowledgement requires to be stamped is whether the acknowledgment was made for the purpose of supplying evidence of the debt. If the answer to this question is in the affirmative, then it does not make any difference whether there may be another purpose also for which the endorsement might have been made. It is quite conceivable for example that an acknowledgment may be made for two purposes in view, one, to supply evidence of the debt, and the other to save limitation. One cannot consequently say that an acknowledgment does not require to be stamped because one of the objects with which it was signed was to save limitation, "Whether there was or there was not an intention to supply the decree-holder with an acknowledgment for the purpose of saving limitation, it is necessary that the document should be stamped if there was also an intention to supply evidence of the debt. On the other hand, it is only when one can say that there was no intention to supply evidence of the debt that the document is not required to be stamped.

7. It is true that when it has got to be determined whether acknowledgment was signed by the debtor for the purpose of supplying evidence the question which would arise is as to why if the intention in making the endorsement was not to supply evidence of debt the acknowledgment was ever made at all. If the evidence shows that there was another purpose, namely, that of saving limitation, then the Court would understand that the acknowledgment might have been made without any intention to supply evidence of the debt. But that does not alter the fact that a document may be made with a view to saving limitation also and yet it may become necessary that it should bear a stamp, because it was also made with an intention to supply evidence of the debt.

8. Now, in this case as I have already said there was sufficient evidence of the debt. On the other hand execution was being barred by time unless an acknowledgment was obtained. In these circumstances it is obvious that the intention of both the decree-holder and the judgment-debtor when this acknowledgment was obtained by the decree-holder and was given by the judgment-debtor was not to supply evidence of the debt but to save limitation.

9. It is contended, however, on behalf of the appellants judgment-debtors that even where an acknowledgment is made with the intention of saving limitation, the document requires to be stamped, because what is implied in the statement that the document was obtained for the purpose of saving limitation is that the document was obtained for the purpose of providing evidence of the debt for the purpose of saving limitation. But it seems to me that this is based upon a fallacy. What saves limitation is not proof of the existence of the debt. A decree-holder may prove that a debt exists, while at the same time if he has i no acknowledgment of

the debt from the judgment-debtors, limitation will not be saved. As a matter of fact the limitation will not be saved even if he has got an acknowledgment from the judgment-debtors about the existence of the debt, if that acknowledgment is not in writing. Consequently what saves limitation is not the proof of the existence of the debt but is an acknowledgment in writing from the judgment-debtors that there is liability. It is not correct to say, therefore, that even if it could be said from the evidence that the only intention in making the document was to save limitation, it must be taken that the acknowledgment requires to be stamped because the intention was to supply evidence of the existence of the debt for the purpose of saving limitation.

10. As a matter of fact, it seems to me that this was impliedly decided by a full bench of this Court in *Mulji Lala v. Lingu Makaji* ILR (1896) 21 Bom. 201 That case indeed overruled the earlier case of this Court in *Fatechand Harchand v. Kisan* ILR (1893) 18 Bom. 614. In the latter case the question was with regard to an acknowledgment requiring to be stamped under the provisions of Article 1 of the Stamp Act. The Subordinate Judge came to the conclusion that the acknowledgment was not intended to supply the evidence of the debt but was intended to save limitation. It seems that the High Court was not inclined to agree with this view, because they held that even if the document was required to be stamped, it could be used for the collateral purpose of showing an acknowledgment of an existing liability in respect of the goods sold. The full bench disagreed with this view, but all the same they said that the earlier case could be justified upon the footing that if the High Court took the same view as the Subordinate Judge did, then in that case the decision of the High Court was in accordance with the provisions of the Stamp Act. What was obviously meant thereby was that if the High Court also took the view which the Subordinate Judge took that the document was not intended to supply evidence of the debt, but was intended to save limitation, then it was not required to be stamped and consequently it was admissible in evidence and would save limitation.

11. That as a matter of fact was also the view which has subsequently been taken by the Nagpur High Court in *Pachkodi v. Krishnaji* [1946] Nag. 796.

12. The acknowledgment was not consequently required to be stamped and was admissible in evidence.

13. The appeal must be dismissed with costs.